Filed 10/26/09 In re M.T. CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re M. T. et al., Persons Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. E. T., Defendant and Appellant; R. C., Appellant.	C061260 (Super. Ct. Nos. JD226843 & JD227129)

Appellants, the father and the relative caretaker of the minors, appeal from the juvenile court's orders removing the minors from the relative pursuant to a supplemental petition and terminating parental rights.[1] (Welf. & Inst. Code, §§ 366.26,

[1] The relative has requested to join in the father's arguments and has not filed a separate brief.

387, 395; further statutory references are to this code.) They contend the juvenile court erred by sustaining the supplemental petition and removing the minors from placement with the relative. Concluding that appellants lack standing to raise the issue, we dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

In February 2006, a dependency petition was filed in Orange County concerning eight-month-old E. T. alleging the parents engaged in domestic violence in the child's presence and that they each had an unresolved history of substance abuse. The petition alleged further that the mother had failed to reunify with other children, one of whom had been adopted.

The allegations in the petition, with amendments not relevant to the issues herein, were sustained, and E. T. was placed with the mother. The father was not permitted any contact with the child pursuant to a criminal court restraining order.

M. T. was born in August 2006.

There were reports over the ensuing months that the mother continued to have contact with the father, who had failed to comply with his case plan. According to a report in October 2007, the mother had moved with the minors to Sacramento, where she was living with the paternal grandparents. Soon after, it was discovered that the father was visiting the mother regularly despite the no-contact order.

In January 2008, an initial petition was filed by the Sacramento County Department of Health and Human Services

(Department) as to M. T., as well as a supplemental petition in Orange County regarding E. T. and both minors were detained. After E. T.'s supplemental petition was sustained, the matter was transferred to Sacramento County. Further reunification services were ordered for the parents.

The parents did not comply with their case plans. Meanwhile, in late July 2008, the minors began an extended visit with R. C., who was identified in the record as both the father's second cousin and the minors' second cousin. R. C. reportedly had cared for the minors at times when they lived in Orange County and was willing to adopt them if the parents were unable to reunify with them. In September 2008, the juvenile court granted the social worker's request for placement of the minors with R. C. At the same hearing, the court terminated reunification services and set the matters for a hearing pursuant to section 366.26 to select and implement a permanent plan for the minors.

While the section 366.26 hearing was pending, supplemental petitions were filed, seeking to remove the minors from placement with R. C. because it was discovered that R. C. had been convicted of grand theft in June 2008. R. C. previously signed paperwork stating she had not been convicted of a crime. R. C. admitted she stole Vicodin and Valium from the pharmacy where she worked to sell for extra money and reported she had been convicted of a misdemeanor. According to the petitions, adoption had been identified as the permanent plan for the

minors, and R. C. would not be able to pass an adoptive home study due to the conviction.

The "kinship [s]ocial [w]orker" reported that R. C.'s home would not have been approved had she disclosed her conviction. The social worker also reported that R. C. could not assume guardianship over the minors because she was not approved by the kinship unit and she was on probation. According to this social worker, a minimum of one year would have to transpire before R. C. would be eligible to have her home reevaluated for placement.

At the hearing on the supplemental petitions, which was held on the same day as the section 366.26 hearing, R. C. explained to the juvenile court that she had completed community service for her conviction and was on informal probation for three years. She conveyed how much she loved the minors and that she would never do anything to hurt them.

The juvenile court noted it was required to ensure the minors were placed in a home that was properly approved and met certain statutory requirements and that it was precluded from placing the minors in a home that had not or could not be approved. The court enumerated the statutory factors for determining the appropriateness of a relative placement (§ 361.3, subd. (a)), and noted that the minors were very young and were entitled to permanence. The court observed that approval of the placement had not been "based on accurate information, and pertinent information was . . . withheld from th[e] court." The court sustained the allegations in the supplemental

petitions, finding that the previous order of the court had not been effective in protecting the minors because, as a result of her conviction for theft of controlled substances, R. C. was on probation and could not clear kinship approval, an adoptive home study or guardianship approval. The court ordered the minors removed forthwith from the home of R. C. Additionally, the court terminated parental rights and ordered a permanent plan of adoption for the minors.

DISCUSSION

The Department claims that neither appellant has standing to appeal the issue of removal of the minors from their placement with R. C. We agree.

"'In juvenile dependency proceedings, as in civil actions generally [citation], only a party aggrieved by the judgment has standing to appeal. [Citations.]' [Citation.]" (*In re Harmony B.* (2005) 125 Cal.App.4th 831, 837.) "'Whether one has standing in a particular case generally revolves around the question whether that person has rights that may suffer some injury, actual or threatened.' [Citation.] . . . '[A]ny person having an interest recognized by law in the subject matter of the judgment, which interest is injuriously affected by the judgment' is considered a 'party aggrieved' for purposes of appellate standing. [Citation.]" (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034-1035 (*Cesar V.*).) "A nominal interest or remote consequence of the ruling does not satisfy this requirement." (*In re Carissa G.* (1999) 76 Cal.App.4th 731, 734.)

Father's Standing

In order to establish standing, the father must show that his personal rights were affected by the juvenile court's ruling removing the minors from R. C.'s care. (*In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261.) In dependency proceedings, a parent's interest is in reunification and in maintaining a parent-child relationship. (See *In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541.)

While reunification efforts are ongoing, parents generally have standing on appeal to raise issues concerning relative placement. This is because one of the rationales for placing children with relatives is that, during reunification, "[a] relative, who presumably has a broader interest in family unity, is more likely than a stranger to be supportive of the parent-child relationship and less likely to develop a conflicting emotional bond with the child." (*In re Baby Girl D.* (1989) 208 Cal.App.3d 1489, 1493.)

On the other hand, when reunification is no longer being pursued, a parent is not aggrieved by such placement determinations. Thus, in *Cesar V.*, the appellate court held that a parent did not have standing on appeal to challenge the denial of a relative placement request after reunification services had been terminated because the ruling did not affect his interest in reunification with the children. (*Cesar V.*, *supra*, 91 Cal.App.4th at p. 1035.)

The father argues he has an interest in the minors' placement with R. C. because this could bring the minors within

a statutory exception to adoption for relative placements. This exception to adoption provides that, when a child is found adoptable, the juvenile court must terminate parental rights unless it finds "[t]he child is living with a relative who is unable or unwilling to adopt the child because of circumstances that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and the removal of the child from the custody of his or her relative would be detrimental to the emotional well-being of the child." (§ 366.26, subd. (c)(1)(A).)

Based on the record before us, we conclude that the likelihood this exception could apply is too remote to confer standing on the father on this basis.

We begin by noting it is unclear from the record whether R. C. is a "relative" of the minors. A "relative" for purposes of placement in dependency proceedings is defined as an adult who is related to the child within the fifth degree of kinship. (See, e.g., §§ 319, subd. (f)(2); 361.3, subd. (c)(2); 361.5, subd. (g)(1)(D).) Even if we were to adopt the father's definition of a second cousin as the child of a first cousin of one's parents, there is conflicting information in the record as to whether R. C. was the second cousin of the minors or the father. If the latter is the case, R. C. would be related to the minors in the sixth degree. The fact that R. C. was approved for placement as a nonrelative extended family member

suggests that she was not closely enough related to the minors to be considered a relative. (See § 362.7.)

Furthermore, the exception to adoption requires the relative to be "capable of providing the child with a stable and permanent environment through legal guardianship." (§ 366.26, subd. (c)(1)(A).) But, according to the information provided to the juvenile court by the Department, R. C.'s recent conviction would preclude guardianship approval.

And although the minors were doing well in placement with R. C., there is no evidence in the record regarding whether they would suffer detriment to their emotional well-being if removed from her care, another requirement for the exception to apply. Consequently, we conclude the father's interest in placement of the minors with R. C. on this basis is too remote to confer standing on him.

The father also argues he is likely to have more opportunity for contact with the minors if they are adopted by the relative. Father will have no legal right to maintain a relationship with the minors if his parental rights are terminated. Thus, as this is not "an interest recognized by law in the subject matter of the [order]," the father cannot be considered a party aggrieved on this basis. (*Cesar V.*, *supra*, 91 Cal.App.4th at p. 1035.)

The father does not cite any cases expressly recognizing a parent's standing to appeal a relative placement issue after reunification services have been terminated. Two of the cases he cites -- *Alicia B. v. Superior Court* (2004) 116 Cal.App.4th

856 and *In re Rodger H.* (1991) 228 Cal.App.3d 1174 -- involved relative placement determinations at the dispositional hearing, and parental standing was not an issue on appeal. The father also relies on language in *Cesar V.*, in which the appellate court held that, "[e]specially in light of [the parent's] stipulation to terminate reunification services, we cannot see how the denial of placement with [the grandmother] affects his interest in reunification with the children." (*Cesar V.*, *supra*, 91 Cal.App.4th at p. 1035.) But regardless of whether a parent challenges the termination of services, once such services are terminated, a ruling concerning relative placement does not affect that parent's interest in reunification.

Accordingly, we conclude that, under the circumstances presented, the father lacks standing to challenge the removal of the minors from relative placement.

R. C.'s Standing

In *Cesar V.*, the appellate court held that a grandmother, "although not a party, has standing to seek appellate review of the denial of her request for [relative] placement under section 361.3." (*Cesar V.*, *supra*, 91 Cal.App.4th at p. 1034.) The court explained that the grandmother's interest in her relationship with the child was legally protected under section 361.3, which provides a right to preferential consideration for placement for specified relatives. However, the preferential placement consideration does not extend to cousins. (§ 361.3, subd. (c)(2).)

De facto parents also have a recognized legal interest in dependency proceedings. Such caretakers have standing in such proceedings, whereas relatives without de facto status are allowed only an opportunity to be present at proceedings and address the court. (Cal. Rules of Court, rule 5.534(e) & (f).) Thus, in *In re Miguel E.* (2004) 120 Cal.App.4th 521, 542-543, the appellate court held that a grandparent who was not a de facto parent and did not seek to participate in the proceedings lacked standing to appeal the granting of a section 387 petition removing a child from her custody.

R. C. was not entitled to the relative placement preference and she had not been granted de facto parent status. Appellants have proposed no other basis upon which to find that R. C. has a recognized legal interest in the juvenile court's order removing the minors from her care. Accordingly, we conclude she lacks standing in this matter.

DISPOSITION

The appeal is dismissed.

NICHOLSON, Acting P. J.

We concur:

ROBIE, J.

BUTZ, J.